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BOARD OF TRUSTEES OF A COUNTY TUBERCULOSIS HOSPITAL—DEPOSIT ANY SURPLUS FUNDS IN THEIR CONTROL—IN DESIGNATED AND QUALIFIED PUBLIC DEPOSITORIES—§339.26, R.C.

SYLLABUS:

Section 339.26, Revised Code, requires the board of trustees of a county tuberculosis hospital to deposit any surplus funds in their control and custody in designated and qualified public depositories.

Columbus, Ohio, April 18, 1960

Hon. Harry Friberg, Prosecuting Attorney  
Lucas County, Toledo, Ohio

Dear Sir:

I have your request for my opinion reading:

“On August 22, 1957, we received an opinion from your predecessors in office regarding the authority of the Board of Trustees of the county tuberculosis hospital investing its surplus funds in obligations of the United States. This opinion was number 958 and in the conclusion of the opinion it was stated that legislature had clearly indicated that the Board of Trustees did not have the power to invest surplus funds.

"The opinion also specifically cited Sections of the Uniform Depository Act which are 135.12 and the following sections. The opinion infers that the Board of Trustees may not deposit its funds in a bank account bearing interest but does not specifically state so.

"The Wm. Roche Memorial Hospital, which is a tuberculosis hospital in Lucas County, now has over \$500,000. in surplus funds and they have requested our opinion as to whether or not this may be deposited either in banks or savings or loan associations in accounts bearing interest. I would appreciate your advice in this matter."

Your letter refers to Opinion No. 958, Opinions of the Attorney General for 1957, page 394, issued by my immediate predecessor. The question submitted by your office to my predecessor was whether a board of trustees of a county tuberculosis hospital may invest surplus funds in obligations of the United States. The then attorney general advised that:

"The board of trustees of a county hospital has no authority to invest any surplus funds in their control and custody in any bonds or other interest bearing obligations."

I agree with said opinion. I do not follow your conclusions as stated in instant request, wherein you state "The opinion infers that the board of trustees may not deposit its funds in a bank account bearing interest but does not specifically state so." Reference is made to Section 135.12 *et seq.*, Revised Code, apparently to support your conclusions. Section 135.12, Revised Code, reads:

"Whenever, during a period of designation, the amount of the public moneys of the state or of a subdivision is in excess of the aggregate amount of inactive and active deposits as estimated by the proper governing board prior to the beginning of the period of designation, and the board finds that all or part of such excess should be deposited as inactive deposits and that such excess cannot be so deposited in existing depositories of the inactive funds of the state or the subdivision because of the limitations of sections 135.01 to 135.23, inclusive, of the Revised Code, the board shall meet and designate additional public depositories of the inactive deposits of public moneys subject to its control for a period commencing on a specified date and ending on the date of the expiration of the current period of designation. Sections 135.07, 135.08, and 135.09 of the Revised Code shall be complied with in awarding and maintaining inactive deposits for such period.

"If such portion of such excess amount as the board finds should not be deposited as inactive deposits is, when added to

the amount of active deposits of the state or subdivision which the board estimates to be deposited or subject to deposit during the remainder of the period of designation, greater than the aggregate amount of active deposits of such public moneys, applied for by the existing depositories thereof, the board shall, at such meeting, award the active deposits of the public moneys subject to its control to public depositories thereof for a like period. Sections 135.07 and 135.10 of the Revised Code shall be complied with in awarding and maintaining active deposits for such period.

“If, after compliance with sections 135.01 to 135.23, inclusive, of the Revised Code, requiring the deposit of public moneys in public depositories, the amount of public moneys of the state or of a subdivision is in excess of the aggregate amount of such deposits, and the board finds that such excess cannot be deposited in public depositories because of the limitations of such sections, such board may order the treasurer to invest any part of such excess in bonds, notes, certificates of indebtedness, treasury bills, or other securities, issued by and constituting direct obligations of the United States, or obligations of the state of Ohio issued pursuant to the authority of Section 2e, Article VIII, Ohio Constitution, provided that only such obligations as will mature or are redeemable at the option of the holder within two years from the date of purchase shall be eligible securities for such investments. Any order of the board directing the treasurer to invest public moneys shall specifically state the amount of public moneys to be invested and shall specifically describe the securities to be acquired.

“\* \* \*”

However, tuberculosis hospitals are established by special statutes, Sections 339.20 *et seq.*, Revised Code. In the situation here under discussion we are specifically concerned with a county tuberculosis hospital, the establishment of which hospital is authorized under the provisions of Sections 339.31 *et seq.*, Revised Code. Section 339.32, Revised Code, provides that the boards of trustees of such hospitals have all the powers conferred by Sections 339.21 to 339.30, Revised Code, on a board of trustees of district hospitals for the care of tubercular patients. It follows that Section 339.26, Revised Code, pertaining to the handling of funds by the board of trustees of a county tuberculosis hospital, is here applicable. Such section reads in part :

“All taxes levied by the board of county commissioners under section 339.25 of the Revised Code shall, when collected, be paid over to the board of trustees of the district tuberculosis hospital, upon the warrant of the county auditor, at the same time that

school and township moneys are paid to the respective treasurers. *The board of trustees shall give a receipt for such funds and deposit them to its credit in banks or trust companies designated by it. Such banks or trust companies shall furnish security for every such deposit to the extent and in the manner provided in section 135.16 of the Revised Code but no such deposit shall otherwise be subject to the provisions of sections 135.01 to 135.23, inclusive, of the Revised Code. Thereupon, such funds may be disbursed by the board of trustees for the uses and purposes of such hospital, and shall be accounted for as provided in section 339.23 of the Revised Code. \* \* \** (Emphasis added)

Section 135.16, *supra*, deals exclusively with deposits of public moneys in public depositories but confers no authority for the investment of such moneys in securities mentioned in Section 135.12, *supra*, or in securities of any kind.

It is my opinion that there is a clear and definite distinction between interest bearing investments and deposits in designated and qualified public depositories, even though such depositories pay interest on deposits. The distinction is that deposits made in designated and qualified public depositories are not investments within the meaning of the foregoing sections. Such "deposits" do not fluctuate in value as to principal amount deposited, whereas the principal amount "invested" in interest bearing obligations, including obligations of the United States, are subject to market activities. This is recognized by the legislature as provision is made in Section 135.12, *supra*, to sell such securities "at the then current market price," and that members of the board shall not be held accountable "for any loss occasioned by sales of securities at prices lower than their cost."

In Opinion No. 958, my predecessor very well stated the reasons why surplus funds of a county tuberculosis hospital are not subject to Section 135.12, Revised Code.

Accordingly, in specific answer to your inquiry, it is my opinion and you are advised that Section 339.26, Revised Code, requires the board of trustees of a county tuberculosis hospital to deposit any surplus funds in their control and custody in designated and qualified public depositories.

Respectfully,

MARK McELROY

Attorney General